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REMARKS

Applicants thank the Examiner for carefully considering this application.

Applicants present claims 1, 3, 4, 5, 7, 8, and 10-14. Claims 2, 4, 6, 7, 9, 10, 14, 15, and 16 are cancelled herein. Claims 1, 3, 5, 8, and 11-13 are amended herein. New claims 17 and 18 are added based on claims 5, 8, and 11.

Objections to the Specification

The specification is amended to eliminate the embedded hyperlink in the paragraph beginning on page 40, line 19.

Rejections Under 35 U.S.C. §101

Claims 1-9, 14, and 16 were rejected under 35 U.S.C. §101 as failing to distinguish over nucleic acids, nucleic acid probes, and primers as they naturally exist. The claims are amended to include the term "isolated."

Rejections of Claim 11 Under 35 U.S.C. §112, first and second paragraphs

Claim 11 stands rejected under 35 U.S.C. §112, first paragraph, for lack of enablement, and second paragraph, as being indefinite. Claim 11 has been amended to clarify that detection of the presence of a nucleic acid comprising SEQ ID NO:1 indicates that the subject has stage 4s neuroblastoma. The Examiner indicated at page 8 of the Office Action dated December 28, 2007, that such an amended claim would be enabled. Applicants respectfully submit that the amendment to claim 11 overcomes the §112 rejections.

Rejections of Claims 3, 5-10, and 12-15 Under 35 U.S.C. §112, first paragraph

Claims 3, 5-10, and 12-15 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The claims are amended to

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eliminate "partial length" fragments and to specify that complements are "full complements." Applicants respectfully submit that the amended claims overcome the rejections under §112, first paragraph.

The written description requirement requires only that the description of the invention allow persons of ordinary skill in the art to recognize that the inventors had possession of what was claimed. Contrary to the assertion in the Office Action, the written description requirement for a chemical genus can be satisfied by means other than disclosing multiple species of a genus. In *Regents of the University of California v. Eli Lilly & Co.*, the Federal Circuit made clear that "definition...by structure, formula, chemical name or physical properties" is sufficient to meet the written description requirement. 119 F.3d 1559 (Fed. Cir. 1997), cert. denied, 523 U.S. 1089 (1998).

The pending claims are drawn in part to an isolated nucleic acid capable of hybridizing under stringent conditions to DNA selected from the group consisting of SEQ ID NO:1 and its complement (claim 5) or DNA selected from the group consisting of SEQ ID NO:175, SEQ ID NO:176, or their complements (claim 8). The specification as filed discloses SEQ ID NO:1, SEQ ID NO:175, and SEQ ID NO:176 and the stringent conditions for hybridization are described at paragraphs [0035]-[0036] at pages 11-12, and are well known to those of ordinary skill in the art. The ability to hybridize to a particular nucleotide sequence under specified stringency conditions is a *physical property* of the genus of claimed DNA. In addition, hybridization under the disclosed stringency conditions requires that the genus of claimed DNA be structurally similar to the complement of SEQ ID NO:1, SEQ ID NO:175, or SEQ ID NO:176.

Thus, Applicants respectfully assert that the specification as filed provides sufficient written description to evidence possession of the claimed genus directed to sequences which hybridize under stringent conditions to SEQ ID NO:1, SEQ ID NO:175, or SEQ ID NO:176, as the genus is defined by both physical properties and structure.

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Rejections Under 35 U.S.C. §102

Claims 3, 5-10, and 12-15 were rejected under 35 U.S.C. §102(b) as being anticipated by Rehman et al. (*Nucleic Acids Res.*, January 1999, 27(2): 649-55) and claims 3-9 and 14 were rejected under 35 U.S.C. §102(e) as being anticipated by Wang et al. (U.S. Publication No. 2004/0181048, filed August 08, 2001).

With regard to the rejections in view of Wang et al., Applicant's attorneys have been unable to locate the sequences referred to in the Office Action. The Wang et al. publication (as well as its corresponding Statutory Invention Registration) published without a sequence listing. Moreover, Applicant's attorneys have searched PAIR, but no full sequence listing can be located. Both Wang et al. publications refer to a USPTO Website as providing an electronic form of the sequence listing but no such sequence listing can be located by Applicant's attorney. Two sequence listings were filed by Wang et al. on April 4, 2002, and June 24, 2005. However, both are listed in PAIR as "defective", and a full listing is not provided. Applicants have not been able to verify and compare the sequences of Wang et al. with the claimed invention. Applicants respectfully submit the Examiner is relying on evidence that is not available to Applicants and, therefore, does not comply with the Administrative Procedures Act. Accordingly, any Office Action submitted in response to the present Amendment and response cannot be made final.

The claims are amended to clarify that complements are "full complements." Probes 1, 2, and 3 of Rehman are only minimally complementary to SEQ ID NO:1 as shown below. For purposes of comparison, the complement of SEQ ID NO:1 was determined and compared with probe 1, 2, or 3 of Rehman, with the top line being the complement of SEQ ID NO:1 and the bottom line being the identified Rehman probe. For sake of brevity, only the areas of identity are shown.

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Complement of SEQ ID NO: 1 and Rehman Probe 1

EMBOSS_001	1201	ACCCAAATATCCGCACTCGATACCACGGGTCGGACTCCGTCAGAATTGCT	1250
		.	
EMBOSS_001	1	cagaatcg--	8
EMBOSS_001	1251	ATTAAACAAAAAGACTAGTTTTAGATGGTTTTACCGGCCGACGCGACCG	1300
		.	
EMBOSS_001	9	-----ttagtt--gatgg-----cg	21

Complement of SEQ ID NO: 1 and Rehman Probe 2

EMBOSS_001	1151	AGAGATTGAGGACCCGAGTTCGATAGAGGGGTGAAACGGAGGAGTTCACA	1200
EMBOSS_001	1	a	1
EMBOSS_001	1201	ACCCAAATATCCGCACTCGATACCACGGGTCGGACTCCGTCAGAATTGCT	1250
		.	
EMBOSS_001	2	atccaaa-----acgg-----cagaag	18

Complement of SEQ ID NO: 1 and Rehman Probe 3

EMBOSS_001	1	TTACCTTGTCCTCGCACAAAAGACTGGTGTGAACATTTATCTTAATAC	49
		
EMBOSS_001	1	gttgcc--cgtctcg-----ctggtgaaa	22

Thus, an isolated nucleic acid having the sequence set forth in SEQ ID NO:1 is novel and inventive over probes 1, 2, and 3 of Rehman.

The Rehman probes are also only minimally complementary to SEQ ID NOS: 175 and 176. For purposes of comparison, the complements of SEQ ID NOS:175 and 176 were determined and compared with probes 1, 2, and 3 of Rehman, with the top line being the complement of SEQ ID NOS:175 and 176 and the bottom line being the identified Rehman probe. For sake of brevity, only the areas of identity are shown.

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Complement of SEQ ID NO:175 and Rehman Probe 1

EMBOSS_001	1	CG-----GATGACCTTACCTTTGTG	20
		. .	
EMBOSS_001	1	cagaatcgtagttgatggcg	21

Complement of SEQ ID NO:175 and Rehman Probe 2

EMBOSS_001	1	CGGATGACCTTACCTTTGTG	20
		. .	
EMBOSS_001	1	aatccaaaacggcagaag	18

Complement of SEQ ID NO:175 and Rehman Probe 3

EMBOSS_001	1	CGGATGACCTTACCT---TTGTG	20
		
EMBOSS_001	1	gttgcccggt--ctcgctgggtgaaa	22

Complement of SEQ ID NO:176 and Rehman Probe 1

EMBOSS_001	1	GTTTCCGATAGGTTTTCGTT	20
		. .	
EMBOSS_001	1	caga-----atcgtagttgatggcg	21

Complement of SEQ ID NO:176 and Rehman Probe 2

EMBOSS_001	1	GTTTCCGATAGGTTTTCGTT	20
EMBOSS_001	1	aatccaaaacggcagaag	18

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Complement of SEQ ID NO:176 and Rehman Probe 3

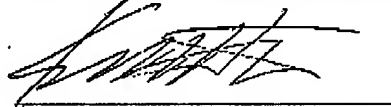
EMBOSS_001	1 GTT-TCCGATAGGTTTTTCGTT	20
	. . .	
EMBOSS_001	1 gttgcccg-----tctcgctggtgaaa	22

Thus, the isolated nucleic acids having the sequence set forth in SEQ ID NO:175 and SEQ ID NO:176 are novel and inventive over probes 1, 2, and 3 of Rehman.

Applicants have responded to all matters presented in the Office Action and respectfully submit their application is in condition to receive Notice of Allowance. Notice to such effect is courteously solicited.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY



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